Message

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Sent: 5/6/2019 7:18:46 PM
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Subject: Legally and practicably enforceable

In response to the 2007 proposal, the EPA received multiple comments regarding sources that have reduced their HAP emissions to below major source thresholds because of the implementation of major source NESHAP requirements. Some stakeholders were concerned that if these sources were to reclassify to area source status and were no longer subject to major source NESHAP requirements, they could stop using the emission controls or emission reduction practices implemented for major source NESHAP compliance or no longer maintain the same level of control as before.[1] This concern was also raised by stakeholders after the issuance of the MM2A Memorandum. A source seeking reclassification because it has reduced its HAP emissions to below the major source thresholds through use of control devices or emission reduction practices implemented for compliance with major source NESHAP requirements will need to demonstrate to the regulatory authority issuing the HAP PTE limit, the degree to which the control devices and emission reduction practices are needed to restrict the source's PTE. If the source relies on its existing control devices and/or emission reduction practices to limit its HAP PTE below the major source thresholds, under the proposed effectiveness criteria, the use of the control devices and/or emission reduction practices must be made legally and practicably enforceable in the absence of the applicability of the major source NESHAP requirements.[2] Alternatively, if a source intends not to retain the control device equipment or emission reduction practices used to comply with a previously applicable major source NESHAP requirement, the source must demonstrate that other limits exist or can be imposed that will restrict the source's maximum capacity to emit HAP, and that these limits are or can be made legally and practicably enforceable to ensure that the source will not emit HAP at or above the major source thresholds. In order to be practicably enforceable, limitations must be supported by monitoring, recordkeeping, and reporting requirements that enable actual emissions to be determined for demonstrating compliance with the PTE limit. A cumulative limit on individual or aggregate HAP emissions (e.g., no more than 10 tpy of an individual HAP or no more than 25 tpy of total HAP) by itself without monitoring conditions to assure compliance (AKA " blanket emissions limit")is generally not sufficient except where it reflects a source's unrestricted PTE to emit a single HAP or all HAPs. Also, since there is no monitoring method for "HAP" in the aggregate, the EPA believes a limitation expressed simply as 25 tpy of total HAP would not be a technically accurate limitation unless there exists a validated relationship between the surrogate and the HAP emissions. An example of a practically enforceable limit on total HAP would be, "Less than 25 tpy of total HAP on a twelve-month rolling cumulative total" that is accompanied by adequate monitoring, recordkeeping and reporting of the individual HAPs emitted by the source, which are then used to demonstrate compliance with the aggregate HAP limit

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[1] These stakeholders are concerned that these sources could increase their emissions to just below the major source thresholds of 10/25 tpy of HAP. To address the concern of potential emission increases, the EPA performed six illustrative analyses. See section IV for a discussion of the illustrative analyses and results.

[2] There is substantial body of EPA guidance and administrative decisions relating to PTE and PTE limits. *E.g., see generally,* Ten-ell E. Hunt and John S. Seitz, "Limiting Potential to Emit in New Source Permitting" (June 13, 1989); John S. Seitz, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act" (January 25, 1995); Kathie Stein, "Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits" (January 25, 1995); John Seitz and Robert Van Heuvelen, "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" (Jan. 22, 1996); *Jn re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit,* 13 E.A.0. 357 (EAB 2007); *Jn the lvfaller ofOrange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC,* Order on Petition No. 11-2001-05 (April 8, 2002) at 4-7

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